

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0424-10
Bill No.: Perfected SS for SCS for SB 36
Subject: Environmental Protection; Natural Resources Dept.; Water Resources and Water Districts
Type: Original
Date: March 5, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue*	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund*	(Unknown)	(Unknown)	(Unknown)

*expected to exceed \$100,000 per year

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Mined Land Reclamation Fund	\$26,000	\$26,000	\$26,000
Hazardous Waste Remedial Fund	\$0	\$809,700	\$1,658,543
Hazardous Waste Fund	\$0	\$539,799	\$1,105,696
Total Estimated Net Effect on Other State Funds	\$26,000	\$1,375,499	\$2,790,239

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Attorney General** (AGO) assume that the additional steps in the rulemaking process might require additional staff time in counseling DNR, staff and commissions. AGO assumes that these costs could be absorbed with existing resources. The additional steps in the rulemaking process also provide additional bases for litigation on the validity of rules. Additional litigation would require additional staffing. Because the volume of additional litigation is unknown, AGO assumes the cost of this proposal is unknown.

Officials from the **Office of the Secretary of State** assume this bill calls for scientific documentation and public notice of such before allowing the Hazardous Waste Management Commission, Soil and Water Districts Commission, Land Reclamation Commission, and Safe Drinking Water Commission to promulgate rules. It also says rules promulgated without this scientific evidence may be invalid, which could result in most of the rules being repromulgated. These rules would be published in both the Missouri Register and the Code of State Regulations. The rules, regulations and forms issued by the Missouri Highways and Transportation

Commission could require as many as 400 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in Code. These costs are

ASSUMPTION (continued)

estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. $[(400 \times \$27) + (600 \times \$23) = \$24,600]$

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. Oversight assumes at least part of the cost of printing and distributing rules relating to this proposal could be recovered through sales of the regulations. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Conservation** assume this proposal would have no fiscal impact on their organization.

Officials from the **Department of Natural Resources** assume that in order to promulgate any rule, the Department of Natural Resources and each of its boards and commissions must file the following with the joint committee on administrative rules concurrently with the filing of the proposed rule:

Regulatory Impact Report

The proposed legislation states that a regulatory impact report must be done for all rules promulgated that prescribe environmental conditions and standards.

To be complete, a regulatory impact report should account not only for human cancer risk, but also for mutalogical effects, immune system defects, developmental disabilities, organ damage and other impacts of human exposure to environmental pollutants. However, the non-cancer health impacts are very poorly understood and reliable data is scarce.

It is very difficult to convert risks to welfare and the environment into economic terms. Placing a dollar value on human life and health is even more problematic. However, in order to compare the regulatory costs with the risk reduction benefits, this would be required.

Risks are cumulative. It would be very difficult to estimate the risk or the risk reduction benefits of one rule in isolation.

Further, there is very little data available on the combined risk of exposure to a number of contaminants, such as atmospheric ozone and a pesticide contaminated water system might have ASSUMPTION (continued)

if an individual had those combined exposures. For example, the exponential risks associated with pollutants in an urban setting where multiple industrial smokestacks are in close proximity to residential areas cannot be quantified.

Generally, the department has relied upon the EPA, the Department of Health (DOH) and the Agency for Toxic Substances and Disease Registry to conduct risk assessment when needed. In addition, even when the federal statute does not explicitly set a risk-based standard, EPA frequently engages in some sort of risk analysis at the national level prior to promulgating a federal rule.

The cost to complete a rule-specific regulatory impact report would vary widely from rule to rule, depending upon the number of pollutants to be regulated, the number of affected facilities, the extent to which data already exists, etc. In the mid 1990's, the DOH spent approximately \$126,100 to conduct a site specific human health and ecological risk assessment on lead exposure in Jasper County. In addition, EPA officials stated contractor costs for the risk assessment for Times Beach, Missouri were approximately \$500,000.

In 1980-83, EPA spent \$150,000 to assess the risk of human inhalation exposure to arsenic emissions from an ASARCO plant in Tacoma, Washington. This cost does not include risk characterization, indirect exposure or ecological risk assessment which would conservatively add another \$188,000. EPA also spent \$35,000 on a site specific inhalation risk assessment for a large chemical plant where almost all the necessary data was already available. This study evaluated only one chemical, and did not include risk characterization, indirect exposure or ecological risk assessment which would have added another \$40,000 to the total cost.

Combining the DOH and EPA risk assessment cost data and inflationary increases, it is estimated that the average costs to comply with this legislation would be about \$131,000 per rule. If the federal EPA risk analysis could be utilized to meet some of the criteria in this proposal, the department assumes each regulatory impact report for those ten rules would cost \$40,000. The DNR adopts approximately 20 rules that prescribe environmental conditions or standards annually, ten of which we assume would have had some type of risk analysis done by the federal EPA. If the department had to perform the complete regulatory impact report on 10 rules and a

partial regulatory impact report on 10 rules, the annual cost would be \$1,710,000 per year, or the equivalent of about 29.5 new FTEs (assuming \$58,000 annual expenditures, including personal service, fringe benefits, and expense and equipment.) These FTE would compose a toxicological/economic/financial analysis unit, dedicated to continuous research and evaluation activities.

ASSUMPTION (continued)

The proposed legislation places the burden or proof on the department or commission promulgating the rule that prescribes environmental conditions or standards to prove that the rule is necessary to prevent specific circumstances or conditions causing harm to human health, public welfare or the environment when the rule is challenged. Since we can not estimate the number of rules that may be challenged each year, the department is unable to determine the impact from this provision.

The proposed legislation requires the department to clearly state the basis for denying a permit. This provision will not impact the department because we currently provide that justification on any denial.

The proposed legislation prohibits the department from placing any conditions in the permit that are not prescribed by regulation unless the applicant agrees such condition. The department assumes this proposal would result in reevaluation of permit conditions to determine if they are based on prescribed regulation. If they are not, the department assumes that these conditions would need to be promulgated.

This proposal would allow the permit applicant the ability to review the draft permit prior to the public notice period unless the applicant waives the opportunity to review the draft permit. Currently some permit issuances must comply with certain time lines. This provision could jeopardize the department's ability to meet those deadlines and could result in an unknown fiscal impact.

Section 640.018.4 of the proposal prohibits the department from revoking a permit or changing a decision for a period of one year unless it is determined that immediate action is necessary to protect the public health and welfare. This provision would affect our ability to protect the environment if we can not address changes during this time frame for a regulated facility or site. The department is unable to determine what fiscal impact could result from this provision due to the uncertainty of unknown circumstances that could arise in the year after a permit is issued.

Oversight assumes that the cost of compliance with this proposal is unknown. Some administrative rules would not require the cost-benefit analysis contemplated in this proposal. Further, Oversight assumes it is not possible to predict the number of rules which would be adopted or the number of rules adopted which would require the scientific review proposed in this legislation, let alone the number which might be challenged. Oversight assumes that any costs resulting from this proposal would be paid from the state General Revenue Fund since program funds would not be available for such costs.

ASSUMPTION (continued)

Sand and Gravel

This proposal would exempt any sand or gravel operator that mines less than 2,000 tons of gravel per year from regulation and licensing. The department currently tracks sand and gravel operators who remove more than 5000 tons and those that remove less than 5000 tons.

Currently, there are approximately 130 operators who remove less than 5000 tons of sand and gravel from streams annually. Each permit costs \$300 ($130 \times \$300 = \$39,000$). The cost for administering, permitting, and enforcing these permits averages \$500 each ($130 \times \$500 = \$65,000$). It is unknown how many operators remove less than 2000 tons of sand and gravel from streams. Therefore, the department assumes there would be a net cost avoidance of up to \$26,000 as a result of this portion of the proposal.

Hazardous Waste Fees Extension

Current statute provides revenue through January 1, 2005 (first six months of FY05). The proposed legislation would extend the sunset date of two fees that support the hazardous waste program to January 1, 2010. Extension of the sunset date for these fees will continue the current revenue stream. This does not affect the department's authority regarding these issues. Therefore, the program will not be impacted by this legislation.

The proposal extends the sunset date. Revenue received as a result of this legislation is projected to be \$800,000 to the Hazardous Waste Remedial Fund and \$550,000 to the Hazardous Waste Fund for the six month period of FY05 beginning January 1, 2005. The continued fees will generate about \$1.6M annually into Hazardous Waste Remedial Fund and \$1.1M annually to the Hazardous Waste Fund.

Projected revenues for FY 2006 that would be generated are approximately \$2,623,784 in category tax (60% to HWRF and 40% to HWF) and \$140,441 in land disposal fees (60% to

HWRF and 40% to HWF).

The department assumes the revenue will be used to support the regulation of hazardous wastes in the state of Missouri. Revenue from these fees is a critical component of the funding that support the regulation, compliance and enforcement activities conducted by the Hazardous Waste Program and Regional Offices. This funding also supports emergency response activities conducted by the Environmental Services Program.

ASSUMPTION (continued)

County Landfill Fee

This provision would have no direct fiscal impact on the department.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
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GENERAL REVENUE FUND

Cost - Department of Natural Resources

Risk Assessment	(Unknown)	(Unknown)	(Unknown)
Cost-Risk Analysis	(Unknown)	(Unknown)	(Unknown)
Publication Costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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*expected to exceed \$100,000 per year

OTHER STATE FUNDS

Savings - DNR

Mined Land Reclamation Fund	<u>\$26,000</u>	<u>\$26,000</u>	<u>\$26,000</u>
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Estimated Net Effect on

MINED LAND RECLAMATION FUND	<u>\$26,000</u>	<u>\$26,000</u>	<u>\$26,000</u>
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Income - DNR

Hazardous Waste Remedial Fund	\$0	\$809,700	\$1,658,543
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Hazardous Waste Fund	<u>\$0</u>	<u>\$539,799</u>	<u>\$1,105,696</u>
Estimated Net Effect on			
HAZARDOUS WASTE REMEDIAL			
FUND	<u>\$0</u>	<u>\$1,349,499</u>	<u>\$2,764,239</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This act requires all regulations promulgated by the Department of Natural Resources, Hazardous Waste Management Commission, State Soil and Water Districts Commission, Petroleum Storage Tank Insurance Fund Board, Land Reclamation Commission, Safe Drinking Water Commission, Air Conservation Commission, and Clean Water Commission to be based on sound science. The Department of Natural Resources is required to prepare a risk assessment and cost-benefit analysis for all rules promulgated by the referenced agencies.

The risk assessment and the cost-benefit analysis must include specific components which are covered in the act and must be developed using scientifically objective and unbiased standards. The assessments and analyses must be made available to the public via the Internet and DNR must allow for and respond to comments from the public. The assessment, analysis, testimony and comments must be considered by the department or the commission in promulgating the regulation. The failure of the department to conduct the risk assessment and the cost-benefit analysis will be considered grounds for vacating the regulation. The risk assessment is also required to be filed with the Joint Committee on Administrative Rules at the time the proposed rules are filed pursuant to Section 536.024, RSMo.

A provision is included to allow for the promulgation of regulations without conducting a risk

assessment and a cost-benefit analysis if the director believes that the action is immediately necessary to protect the public health and welfare. However, the director must justify these actions in writing and the Department would then have the responsibility to complete the risk assessment and cost-benefit analysis within 45 days.

In proceedings challenging rules promulgated by the Department of Natural Resources, hazardous Waste Management Commission, State Soil and Water Districts Commission, Petroleum Storage Tank Insurance Fund Board, Land Reclamation Commission, Safe Drinking Water Commission, and Clean Water Commission the burden of proof shifts to the department or commission promulgating the rule to prove that the rule is necessary to prevent specific

DESCRIPTION (continued)

circumstances of conditions causing harm to human health and the environment.

This act removes the ability of third parties to challenge decisions of the Director of the Department of Natural Resources.

The act requires the Department of Natural Resources, Hazardous Waste Management Commission, State Soil and Water Districts Commission, Petroleum Storage Tank Insurance Fund Board, Land Reclamation Commission, Safe Drinking Water Commission, Air Conservation Commission and Clean Water Commission to state specific reasons for denials of permits.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Natural Resources
Department of Health and Human Services
Department of Conservation
Secretary of State

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Bill No. Perfected SS for SCS for SB 36
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A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
March 5, 2003